IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL W.P.NO.457 OF 2003

Smt.Suman Madanlal Bora ..Petitioner

Vs.

State of Maharashtra & Ors...Respondents

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Mr.Madhav Jamdar Advocate for Petitioner
Mr.D.S.Mhaispurkar A.P.P. for the State
Mr.V.G.Majumdar & C.V.Lad Advocates for Respondent No.7

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CORAM: SMT.V.K.TAHILRAMANI,J.

DATE : APRIL 12, 2006

P.C.

1. Heard the learned advocate for the petitioner i.e. original accused, learned advocate for the respondent no.7 i.e. original complainant and learned A.P.P. for the State. Rule. By consent, rule is heard forthwith.

2. The petitioner is facing prosecution under Section 138 of Negotiable Instruments Act. The said case is numbered as C.C.No.1776 of 2001 and is pending before the learned Judicial Magistrate

F.C.Court No.6, Pune. The process came to be issued against the petitioner under Section 138 read with Section 141 of Negotiable Instruments Act. The said order was challenged by way of revision application before the concerned Sessions Court. By order dated 29th January, 2002 the learned IVth Additional Sessions Judge, Pune dismissed the said revision. Being aggrieved by the said order, the petitioner has approached this Court.

3. It is contended by the learned advocate for the petitioner that at the time when the cheque was issued and dishonoured, the petitioner was not a partner of the firm and she had retired long before the cheque was issued and dishonoured. Mr.Jamdar, the learned advocate for the petitioner has submitted that it has been observed by the Supreme Court in the case of **S.M.S.Pharmaceuticals Ltd. Vs. Neeta Bhalla and another** reported in **(2005) 8 Supreme Court Cases 89**, that "it should be averred in the complaint that the person (accused) was in charge of and responsible for the conduct of the business of the company." It has been further observed by the Apex Court that "without this

averment being made in the complaint, the requirement of Section 141 cannot be said to be satisfied." In support of his contention, Mr.Jamdar, the learned advocate for the petitioner has also placed reliance on the decision of this Court in the case of **Smt.Suman Madanlal Bora Vs. State of Maharashtra & Ors.** reported in **2006 All MR (Cri.) 707**. Mr.Jamdar has pointed out that the wordings of the said complaint in the said case and present case are similar. In the said case, the complaint came to be quashed as the necessary averments were not present in the complaint. After perusing the said judgment and the complaint in the present case, it is seen that the wordings of the complaint filed in the case of **Smt.Suman Bora (supra)** and the complaint in the present case, are identical. In this view of the matter, C.C.No. 1776 of 2001 pending before the learned Judicial Magistrate F.C. Court No.6, Pune, is quashed qua the petitioner only. Rule made absolute.

[SMT.V.K.TAHILRAMANI,J.]